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March 16, 2005

VIA ELECTRONIC FILING

The Honorable Joseph J. Farnan, Jr.
United States District Court
District of Delaware
844 King Street
Wilmington, DE 19801

**Re: *Affymetrix, Inc. v. Illumina, Inc.*
D. Del., C.A. No. 04-901-JJF**

Your Honor:

I write in response to the letter sent to you on March 11, 2005 by Affymetrix' counsel in the above-referenced action.

First and foremost, Affymetrix' letter was filed in contravention of this Court's rules requiring parties to meet and confer to resolve disputes before raising them with the Court. Without any communication to Illumina at all -- not even a phone call -- Affymetrix filed its letter with the Court one day after Illumina served its Responses to Affymetrix' First Set of Interrogatories. This failure to meet and confer is important in this instance. If Affymetrix had first made a phone call to Illumina, it would have realized that it has misunderstood Illumina's designation of its information as "confidential" and actually had no need to contact the Court about this issue in the first place.

Affymetrix complains that, based on Illumina's designation of its responses as "confidential," all of Affymetrix' in-house lawyers are prevented from reviewing any of this information. This is incorrect. Illumina specifically marked its responses under the lowest tier of its proposed protective order -- "confidential" as opposed to the "highly confidential" or "outside counsel's eyes only" categories -- because, while it deemed some of the information confidential and sensitive, it did not deem the information so sensitive as to merit the most-restrictive designation. As such, Affymetrix's designated in-house lawyers, including Mr.

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Malacek of its so-called Litigation Unit, are free to review the responses. Thus, the issue raised in Affymetrix' letter is in fact moot.¹

While Illumina does not necessarily oppose a conference with the Court regarding the schedule and protective order for this case, Affymetrix' suggestion that the case is "stalled" and necessitates the Court's immediate attention is simply not true. Written discovery has now been exchanged and the case is proceeding along the case schedules proposed by the parties. Moreover, any prejudice claimed by Affymetrix is the result of their failure to obtain outside patent litigation counsel in this case, and does not justify any emergency action from the Court at this time.

Respectfully,

/s/ Richard K. Herrmann

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cc: Dr. Peter T. Dalleo, Clerk of the Court (via electronic filing)
MaryEllen Noreika, Esq. (via electronic filing)
Michael J. Malecek, Esq. (via facsimile)

¹ Illumina understands why Affymetrix may have been mistaken regarding the effect of Illumina's designation of its responses as "confidential," but that simply underscores the need to clarify the designation with Illumina before raising the issue with the Court.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2005, I electronically filed the foregoing document, **LETTER TO THE HONORABLE JOSEPH J. FARNAN, JR.**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

MaryEllen Noreika, Esq.
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Additionally, I hereby certify that on the 16th day of March, 2005, the foregoing document was served via facsimile on the following non-registered participants:

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